

<b>Hill v Ogoke</b>
2017 NY Slip Op 33065(U)
March 29, 2017
Supreme Court, Westchester County
Docket Number: 51391/2016
Judge: Sam D. Walker
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. SAM D. WALKER, J.S.C.

-----X  
YASHIKA HILL, As Proposed Administratrix of the Estate of JODI WILLIAMS, Deceased, and YASHIKA HILL, Individually,

Plaintiff,

-against-

Index No. 51391/2016  
DECISION & ORDER  
Motion Sequence 2

BENTLEY OGOKE, OGEDI OHAJEKWE,  
WESTCHESTER SURGERY P.C., and MONTEFIORE  
MOUNT VERNON HOSPITAL,

Defendants.

-----X  
The following papers were received and considered in connection with the above-captioned matter:

PAPERS  
Notice of Motion/Affirmation/Exhibits 1-8

NUMBERED  
1-10

Plaintiffs move by notice of motion for an Order granting leave to renew Plaintiff's motion for default judgment and upon renewal, granting default judgment against Defendants, Ogedi Ohajekwe and Westchester Surgery P.C., pursuant to CPLR 3215(a), on the ground that the defendants failed to appear.

This is a medical malpractice/wrongful death action against the named Defendants alleging that, Defendants departed from accepted standards of medical, surgical, nursing, wound care and other good practices when treating Plaintiff decedent,

Jodi Williams, in 2014, resulting in her sustaining severe, serious and permanent personal injuries and ultimately her death.

Plaintiffs filed the Summons and Verified Complaint on February 4, 2016. Plaintiffs filed affidavits of service showing service upon all Defendants on February 10, 2016, with service upon the defaulting defendants by service upon Grace Sservadda, Office Assistant as Registered Agent<sup>1</sup>. Defendants, Dentley Ogoke and Montefiore Mount Vernon Hospital have filed answers, but the remaining Defendants Ogedi Ohajekwe and Westchester Surgery P.C. have not responded to the Complaint. The time to answer or make a pre-answer motion has expired and no stipulation extending the time of the defendants to appear, answer or move with respect to the complaint, has been requested nor entered and the defendant is in default. Plaintiff previously filed a motion seeking a default judgment, pursuant to CPLR 3215, which this Court denied, finding that Plaintiffs failed to submit an affidavit of non-military status.

A "motion for leave to renew 'shall be based upon new facts not offered on the prior motion that would change the prior determination' (CPLR 2221[e][2]) and 'shall contain reasonable justification for the failure to present such facts on the prior motion' (CPLR 2221[e][3]." *Caraballo v. Kim*, 63 A.D.3d 976, 882 N.Y.S.2d 211 (2d Dep't 2009), citing, *Ramirez v. Khan*, 60 A.D.3d 748, 874 N.Y.S.2d 257 (2d Dep't 2009); *Dinten-Quiros v. Brown*, 49 A.D.3d 588, 852 N.Y.S.2d 793 (2d Dep't 2001); and *Madison v. Tahir*, 45 A.D.3d 744, 846 N.Y.S.2d 313 (2d Dep't 2007).

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<sup>1</sup>The Court is not aware of a designation of agent for service in writing, executed and acknowledged and filed in the office of the clerk of Westchester County.

"However, it is within the court's discretion to grant renewal even upon facts known to the movant at the time of the original motion." *Friedman v. U-Haul Truck Rental*, 216 A.D.2d 266 (2d Dep't 1995). "The requirement that a motion for renewal must be based on new facts is a flexible one". *DeMarquez v Gallo*, 94 A.D.3d 1039 (2d Dep't 2012). "CPLR 2221 (e) has not been construed so narrowly as to disqualify as new facts not offered on the prior motion, facts contained in a document originally rejected for consideration because the document was not in admissible form." *Schweinus v. Urological Assoc. Of L.I., P.C.*, 94 A.D.3d 971, 972 (2d Dep't 2012); see also *Hackney v Monge*, 103 A.D. 3d 844, 845 (2d Dep't 2013).

Plaintiffs now state that they undertook a post-default investigation relating to Defendant Ohajekwe's military status and determined that Ohajekwe was not in active military service at the time of his default. Plaintiffs now submit two affidavits of non-military status as evidence. Upon such submissions, the Court now grants Plaintiffs' motion to renew the motion for default judgment.

On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defaulting party's default in answering or appearing, CPLR 3215(f); *Atlantic Cas. Ins. Co. v. RJNJ Servs., Inc.*, 89 A.D.3d 649, 651, 932 N.Y.S.2d 109; *Allstate Ins. Co. v. Austin*, 48 A.D.3d 720, 720, 851 N.Y.S.2d 375.

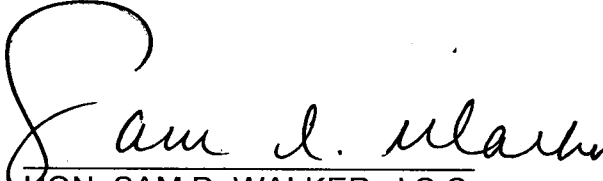
In support of its motion, Plaintiffs have submitted their underlying motion for default judgment, an attorney's affirmation, a copy of the pleadings, the affidavits of

non-military status, a copy of the decedent's death certificate and a copy of the affidavit of service showing service of the commencement documents. The Court finds these submissions to be sufficient. Therefore, the Court grants Plaintiff's motion for a default judgment.

The parties are directed to appear before the Court Attorney/Referee Wood on April 3, 2017 at 9:30. An inquest on the issue of damages to be scheduled at a later date in tandem with a trial against the other Defendants.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York  
March 29, 2017

  
HON. SAM D. WALKER, J.S.C.